IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CANCELLATION APPLICATION No 1 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SYMPHONY COMFORTS SYSTEMS LTD.

Versus

PRADIP NANDLAL DHOOT

Appearance:

1. CANCELLATION APPLICATION No. 1 of 2000
MR KAMAL TRIVEDI for Petitioner
MR GN SHAH for Respondent No. 1
NOTICE SERVED BY DS for Respondent No. 3, 4

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 24/07/2000

C.A.V. JUDGEMENT

1. The petitioner-Symphony Comforts Systems Limited

has filed this petition under the provisions of Section 51-A of the Designs Act, 1911, (hereinafter referred to as `the Act') for cancellation of the design registered under Registration No.174601 dated 29th August, 1997, in Class III in the name of Shri Pradip Nandlal Dhoot-respondent No.1 herein.

2. The facts giving rise to this application are as under:

2.1 The petitioner is a limited company incorporated under the Companies Act, having its registered office at Ahmedabad. The company is carrying on business of manufacturing and marketing of various kinds of house appliance viz. Desert Air-Cooler,(hereinafter referred to as said air-cooler) grinder, water heater etc. It was stated that the petitioner is having well-established business since number of years and have acquired a very good name and reputation all throughout India and also in other countries of the world. The petitioner is recognised by the name of "Symphony", which is an important, memorable part being used in various advertisements, stationary products and other material and its market is capable to connote and/or denotes the product of the petitioner's alone and none-else. In other words, the word "Symphony" is indicative of the products of the petitioner. The petitioner has developed various designs for their product viz. Desert Air-Coolers and have started marketing it's products including the product in dispute i.e. S-4700 Air-Cooler. The petitioner has also established business and its previous year turn over runs into Rs.29.22 Crores. The petitioner has acquired substantial assets of more than Rs.13 Crores and it's products is of very high standard quality and its prices are very reasonable and because of very wide advertisements and sale promotional expenses incurred by the petitioner, the demand of the petitioner' products is increasing and has acquired enviable reputation in the Indian market. It has also been alleged in the petition that petitioner' received an order of injunction passed by the City Civil Court, Hyderabad, in Civil Suit No.122 of 2000 and I.A. No.404 of 2000. After receipt of the said order, an advertisement came to be published by the respondents alleging that they (i.e. respondents) are the exclusive owner and proprietor of the alleged design of the air-cooler registered under Registration No.174601 dated 29th August, 1997, under Class III in the name of respondent No.1 and further alleging that the petitioner has copied the said design and hence the petitioner is liable for the infringement of the said design. It is

submitted that because of such advertisement published by respondent No.1 and the injunction order served upon the petitioner passed by the City Civil Court, Hyderabad in Civil Suit No.122 of 2000, the petitioner constrained to file the present petition challenging the validity of the registration of registered Design No.174601 obtained by respondent No.1 of the said registered design alleged in the said advertisement and referred in the aforesaid Civil Suit bearing Registration No.174601. It is further submitted that the respondent No.1 has fraudulently made claim before the Controller of Patents and Designs, Calcutta, and has not made true and correct statements and falsely claimed that respondent No.1 is the original originator inventor of the said design. The petitioner further submitted that in fact the said registered design is not a new or original design but the same is known, published, used and available design in the market and sold in the market even prior to the application moved by respondent No.1. It is submitted that the said design has no novelty, no new features and all the features are and were known, used and published even prior to the date of the said registration. According to them said design was used, published and available in Indian market since 1994. In support of the same, the petitioner has filed affidavit of one Rajendra Adalaja, a businessman of Ahmedabad and also affidavit of Ghelabhai A. Panchal, a businessman of air cooler i.e. the documents in this behalf. By way of amendment the petitioner states that effect of registration is caused at Ahmedabad. It was stated that the petitioner is carrying on it's trading activities at Ahmedabad. The adverse effect of the registration on the petitioner whose main place of business is at Ahmedabad, falls on the petitioner at Ahmedabad, and therefore, this Court has jurisdiction to decide the same. The petitioner in support of the same have relied upon a Full Bench judgment of the Delhi High Court reported in AIR 1978 Delhi p.146 - Girdharilal Gupta Vs. K.Gian Chand Jain & Co.

3. In view of the same, this Court issued notice to the respondents on 29.3.2000 but did not pass interim order on that day.

4. On behalf of respondent, Shri D.S.Mutalik (Manager Legal) of respondent No.2 has filed an affidavit dated 7th April, 2000. According to him, the cause of action for filing this petition before this Court arose as a result of an order of injunction passed by the City Civil Court at Hyderabad in Civil Suit No.122 of 2000 and I.A. of 104/2000. In view of the said order passed by the Hyderabad Civil Court, the petitioner can file a

petition under Section 51-A of the Act only before the Andhra Pradesh High Court. The respondent also contended that, alternative the fact that the impugned design was registered by the Controller of Patents and Designs, Calcutta, and, therefore, even Hon'ble Calcutta High Court has inherent jurisdiction to decide the validity of design. As far as the cause of action is concerned, the Hon'ble Andhra Pradesh High Court alone has jurisdiction in respect of the cancellation of the design as the suit for infringement is filed in Hyderabad City Civil Court. In view of the same, it was submitted that this Court has no jurisdiction to decide the petition filed by the petitioner. On merits of the matter also the respondent has stated that respondent has sold 52630 coolers and the value of the same is approximately Rs.31,06,20,000/(Rupees Thirty One Crores Six Lacs Twenty Thousand Only). It was stated that the respondent had been manufacturing the said coolers since December 1998 and same is being marketed and acquired a good reputation in the market. It was stated that petitioner has suppressed some facts before this Court. The petitioner has also filed a rejoinder dated 11th April, 2000, and denied the contention. The respondent has also filed additional affidavit dated 15th April, 2000, regarding amendment which has been filed by the petitioner in this behalf.

5. Before I discuss the submissions of the merits of the matter, I would like to set out statutory provisions in this behalf.

5.1 This Act is known as Designs Act, 1911. Section 2 provides for definitions. Section 2(3) provides definition of Controller. Section 2(5) provides definition of "design".

"Design": "design" means only the features of shape, configuration, pattern or ornament applied to any article by any industrial process or means, whether manual, mechanical or chemical, separate or combined, which in the finished article appeal to and are judged solely by the eye; but does not include any mode or principle of construction or anything which is in substance a mere mechanical device, and does not include any (trade mark as defined in clause (v) of sub-sec.(1) of S.2 of the Trade and Merchandise Marks Act, 1958) or property mark as defined in section 479 of the

Indian Penal Code."

Section 2(7) definition of High Court.

"High Court":- "High Court" means -

(a) in relation to a State, the High Court for that State;

Section 2(7)(a) provides in relation to a State, the High Court for that State. Section 43 provides application for registration of designs. Section 44 provides for registration of designs in new classes. Section 45 provides for certificate of registration. Section 46 provides for register of designs. Section 47 provides for copyright on registration. Section 50 provides for inspection of registered designs.

Section 51-A provides for cancellation of registration.

"Sec.51-A - Cancellation of registration:- (1) Any person interested may present a petition for the cancellation of the registration of a design-

(a) at any time after the registration of the design, to the High Court on any of the following grounds, namely:-

(i) that the design has been previously registered in [India]; or

(ii) that it has been published in [India] prior to the date of registration; or

(iii) that the design is not a new or original design; or

(b) within one year from the date of the registration, to the Controller on either of the grounds specified in sub-clauses (i) and (ii) of clause (a).

(2) An appeal shall lie from any order of the Controller under this section to the High Court, and the Controller may at any time refer any such petition to the High Court, and the High Court shall decide any petition so referred."

Section 64 provides for rectification of register. Section 77 provides for power for Central Government to make rules.

6. In view of conferment of this power the Central Government has framed the rules that may be called Designs Rules 1933. Rule 2 provides for certain definitions. Rule 48 provides for cancellation of registration of designs under Section 51-A. Rule 62 provides for appeals to the Central Government. Rule 63 provides for certified copies of documents.

6.1 Mr.Kamal Trivedi, learned counsel for the petitioner stated that present petition has been filed for cancellation of registration of design obtained by respondent No.1. He has stated that those who wish to purchase an article for use are often influenced in their choice not only by practical utility and efficiency but by appearance. Some look for artistic merit. Some are attracted by a design which is strange or bizarre. Many simply choose the article which catches their eye. Whatever the reason may be, one article with a particular design may sell better than one without it. It would, therefore, be profitable to use a design which will attract customers. Much thought, time and expense may have been incurred in finding a design which will increase sales. Learned advocate for the petitioner stated that the petitioner had already developed the said design for his air cooler which they are using and carrying on business at Ahmedabad.

6.2 The learned counsel for the petitioner submitted that as respondent No.1 has tried to copy the design of petitioner and also obtain fraudulent registration of the same, the petitioner has filed the present petition for cancellation of the said registration of design under the provisions of the Designs Act. He has further submitted that as petitioner is carrying on business at Ahmedabad and his business is directly affected by the registration of the design of the respondent No.1, the petitioner has filed the present petition before this Court. In support of the same he relied upon following authorities.

7. Mr.Kamal Trivedi, learned counsel for the petitioner has relied upon a judgment of Full Bench of hon'ble Delhi High Court in the case of Girdharilal Gupta Vs. M/s. K.Gian Chand Jain & Co. reported in AIR 1978 Delhi p.146. In the aforesaid case, respondent filed a petition under Section 51-A of the Designs Act on the following averments supplemented by oral arguments:

"(a) Both the respondents and the appellant are carrying on the same trade at Delhi.

"(b) The appellant has got two designs 131357 and 131364 registered in the Register of Designs maintained under Section 46 of the Act.

"(c) These designs had, however, been published in India in respect of laces prior to the date of registration secured by the appellant.

"(d) The trade of the respondents in Delhi is hampered by the trade of the appellant in the same goods, viz. laces, because of the wrongful protection afforded to the appellant by the registration.

"(e) The respondents, therefore, prayed that the registration of these two designs in favour of the appellant be cancelled by the High Court."

7.1 The aforesaid judgment of the Full Bench of Hon'ble Delhi High Court (Coram: V.S.Deshpande,J and S.S.Chadda,J.) has taken majority view while Justice H.L.Anand has taken minority view considering the provisions of Designs Act, particularly, definition of High Court, nexus between subject matter and jurisdiction effect of registration, definition of person affected. In para 15 of the said decision the court observed as under:(Majority view)

"However, the concept of locus-standi which gives competence to a person to make an application or file a suit or a petition has been broadened. It includes not only a legal injury to some private interest of the petitioner, but also a legal injury to some public interest in the redress of which the petitioner has some interest over and above the interest of a mere member of the public. On the other hand, the respondents in the appeals before us are traders doing business at Delhi. They allege that their trading is injured because of the wrongful protection and monopoly given to the designs registered in favour of the appellant. This injury to the interest of the respondents takes place at Delhi. In this case the appellant is also enforcing his right based on registration by suits filed

against the respondents at Delhi. The significance of being "person interested" is, therefore, twofold. Firstly, it gives them the locus standi to make the application under Section 51-A. Secondly, it helps to fix the place at which the applications may be made by them, the place being Delhi where the injury to their interest occurred. The injury to the private interest of the respondents is thus a part of the cause of action or the subject matter for the applications made under Section 51-A. The rest of the subject matter or the cause of action consists firstly in the registration and continuance of the design and secondly in the wrongfulness of such registration and continuance because of the existence of the grounds or the grounds mentioned in Cl.(a) of sub-sec.(1) of S.51-A of the Act, namely, that the design has been previously registered in India or that it has been published in India prior to the date of registration or that the design is not new or original.

In para 16 of the said decision, the court observed as under:

"Under Sec.51-A if the petitioner is a mere pro bono publico, he would have to make the application in that High Court within the local limits of which the registration enures and continues attacking it on one of the grounds specified in S.51-A. But, if the petitioner is a person whose private commercial interests are injured, then the place where the commercial interests are injured is included in the requirement of S.51-A that the application can be made only by the person interested. A part of the cause of action or the subject matter is, therefore, situated in Delhi. The application under S. 51-A can, therefore, be made at Delhi or at Calcutta, but in no other High Court."

(emphasis supplied)

In para 21 of the said decision, the court observed as under:

"For the above reasons, we find that the petition for cancellation of the design under S.51-A would lie to that High Court within the territory of which subject matter has the necessary nexus. The subject matter consists of a series of connected events beginning with the registration

> of the design in the register of designs by the order of the controller and ending with the impact of the said design on the rights of the competitors at such places at which the trading of the competitors is injured or affected by the enjoyment of the copyright by the registered proprietor of the design basing his right on the registration of the design. An application may, therefore, be filed either in the High Court having jurisdiction over the place at which enjoyment of the copy-right by the registered proprietor causes injury to the commercial interests of the applicant. Briefly, the application would be made in the High Court, the local jurisdiction of which has a nexus with the subject matter or the cause of action of the application. The applicant would have to show jurisdiction in the High Court to which the application is made and such jurisdiction can be shown only by establishing connection between the cause of action and/or subject matter of the application and the territory within the local jurisdiction of the High Court. While such an application can always be made to the High Court within the local limits of which the registration of the design is made, the jurisdiction is not confined to that High Court, but would extend to any other High Court within the local limits of which a part of the cause of action and/or subject matter of the application may arise. This view differs from the view of the learned single Judge and the other decisions of this court relied in the order under appeal. We also differ from the view expressed by K.T.Desai, J. of the High Court of Bombay in the Kohinoor Mills Co.'s Case (Misc. Ptn. No.274 of 1956, D/8.7.1957(Bom)."(since Reported in 59 BLR 397).

7.1(A) The petitioner has heavily relied upon the Full Bench Judgment of Delhi High Court in the case of Girdharilal Gupta's case (supra) and contended that in this case the applicants are carrying on business at Ahmedabad, their business is suffered because of the wrongful protection and monopoly given to the designs registered in favour of the appellant. This injury to the interest of the petitioner takes place at Ahmedabad and the petitioners are also enforcing their rights based on registration. According to them, the place at which the applications may be made by the petitioner, the place being Ahmedabad where the injury to their interest occurred. The injury to the private interest of the

petitioner is thus a part of the cause of action or the subject matter for the applications made under Section 51-A.

7.2 Learned counsel for the petitioner has also relied upon the judgment of Bombay High Court reported in (1957) (59) Bombay Law Reporter p.397 in the case of The Kohinoor Mills Co. Ltd. Vs. Vijay Bharat Thread Mills (India). The learned Judge has observed in the said decision as under:

> "In my view, what the Legislature intended was an application to any High Court provided it was a High Court set out in s.2(7) of the Act, and it was left to the Court either to try the matter or to stay the matter if the Court thought that the application could be more justly or conveniently disposed of by another High Court. In my view, the same construction should be placed on the expression "the High Court" when used in connection with designs, and an application for the revocation of a design can be made to any High Court provided it was one of the High Courts specified in S.2(7) of the Act. When one has to consider the question of jurisdiction, which has been conferred by a special enactment upon a High Court, one has to look to the provisions of that Act for the purpose of determining when the Court is to exercise that jurisdiction. One cannot turn to the provisions of the Letters Patent or the Civil Procedure Code for the purpose of determining when that jurisdiction has to be exercised. If the Legislature intended to circumscribe the ambit of the special jurisdiction of the Court, it was for the Legislature to have expressly stated so. In my view, it is open to the petitioner to file a petition in any High Court provided it is one of the Courts specified in s.2(7) of the Act. The Bombay High Court is one of such Courts, and in my view the petition is maintainable in the Bombay High Court."

7.3 The learned counsel also relied upon another judgment reported in 1988(1) G.L.R. p.481 in the case of Modern Food Industries (India) Ltd, Ahmedabad Vs. M.D. Juvekar. In para 17 of the said decision the Court observed as under:

> "On behalf of the applicants it is contended that

this Court was not competent to entertain the petition and grant the reliefs sought by the respondent-employee as no part of the cause of action arose within the jurisdiction of this Court. Article 226 empowers the High Court to issue to any person or authority, including in appropriate cases, any Government, throughout the territories in relation to which it exercises jurisdiction, directions, orders or writs for the enforcement of any of the rights conferred by Part III and for any other purpose. Clause (2) of Article 226 provides that such power may be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority is not within those territories. Therefore, it is obvious that at least a part of the cause of action must be shown to have arisen within the jurisdiction of this Court to enable it to grant any relief sought by the respondent-employee. The learned single Judge has come to the conclusion that since the order of termination of service dated April 21, 1980 was communicated to the respondent-employee at Ahmedabad, the consequence of the order fell at Ahmedabad and, therefore, this High Court was competent to entertain the writ petition and grant the relief sought. We are, therefore, of the opinion that the learned single Judge was right in coming to the conclusion that since the impugned order of dismissal was served on the respondent-employee at Ahmedabad and the Ahmedabad Unit of the Company was directed to pay 90 days' notice pay to him, the respondent-employee was entitled to move this Court for an appropriate relief necessitated on the communication of the impugned order."

7.4 Learned counsel for the petitioner has also relied upon the judgment of this Court reported in 1998 SEBI & Corporate Laws Reports Vol.15 page 213 in the case of Alka Synthetics Limited Vs. Securities and Exchange Board of India, particularly para 25 of the said decision the court observed as under:

"The petitioner company has its registered office at Ahmedabad. Citus of its movable property is at Ahmedabad. By impugned order the right of the

petitioner company arising out of transaction of that movable property are affected. Thus applying the test in Modern Food Industries (India) Ltd.'s case (supra) it can well be said that consequence of the impugned order fell on the petitioner at Ahmedabad where the order was served, where the citus of petitioner's property in share was situated. The principles applicable to determine the jurisdiction of court in a suit for recovery of movable property cannot be applicable, obviously because this lis is not for recovery of movable property. The petition is to protect petitioner's right in movable property which has been impaired not by a person possessed of such property but by an act of statutory authority in purported exercise of its powers under the Act. The citus where such right is affected or where the effect of such order to affect the right becomes the relevant consideration."

7.5 The learned counsel has also relied upon another judgment reported in 1994 PTC p.357 in the case of National Trading Co. V/s. Smt. Monica Chawla. In para 3 of the said decision the Court observed as under:

"It is stated that the respondent had in fact initiated proceedings against the petitioner for the alleged breach of its registered design vide Suit No.1594/91 and that the present petition is mala fide. Respondent has further alleged that the petitioner has no locus standi to institute the present suit. This court cannot pass any order. During the course of arguments, the respondent could not satisfy me as to why the present petition could not be instituted by the petitioner, particularly, when a suit is pending against it in respect of the same design. That fact alone makes the petitioner a person interested as contemplated under Section 51 A. The respondent could not also advance any arguments on her objection that this court had no jurisdiction to grant the relief in the present dismissed."

8. Mr.G.N.Shah, learned counsel for the respondents has relied upon the judgment of Bombay High Court reported in AIR 1955 Bombay p.463 in the case of Lalbhai Ticumlal Mills Ltd. Vs. Dhanubhai Motilal Vin and others. In para 5 at page 460 the court observed as under:

"Now, the Act does not deal with the causes of action, nor does it indicate what factors will confer jurisdiction upon the Labour Court. But applying the well known tests of jurisdiction, a Court or Tribunal would have jurisdiction if the parties reside within jurisdiction or if the subject matter of the dispute substantially arises within jurisdiction. And therefore the correct approach to this question is to ask ourselves - where did this dispute substantially arise - and in our opinion the only answer to that question can be that the dispute substantially arose in Bombay and not in Ahmedabad. What is the dispute? The dispute is not as to whether the employee approached the employer in Ahmedabad and no agreement was arrived at. The dispute is whether the employer was justified in dismissing the employee, and inasmuch as the employment was in Bombay and the dismissal was in Bombay, it is difficult to understand how it can possibly be urged that the dispute did not substantially arise in Bombay."

8.1 The learned counsel for the respondents has also relied upon the judgment of the Supreme Court reported in AIR 1967 Supreme Court p.1040 in the case of Workmen of Shri Ranga Vilas Motors (P) Ltd. Vs. Sri Rangavilas Motors (P) Ltd and others. In para 14 the court observed as under:

"In our view the High Court was right in holding that the proper question to raise is: where did the dispute arise? Ordinarily, if there is a separate establishment and the workman is working in that establishment, the dispute would arise at that place. As the High Court observed, there should clearly be some nexus between the dispute and the territory of the State and not necessarily between the territory of the State and the industry concerning which the dispute arose."

8.2 The learned counsel for the respondent has also relied upon another judgment reported in 1962(3) Supreme Court Reports p.589 in the case of The Management of Indian Cable Co., Ltd., Calcutta Vs. Its Workmen. On page 592 the court has held, "that in considering whether the Punjab Government was competent to make the order of reference, the principle that a court or tribunal would have jurisdiction if the parties reside within jurisdiction or if the subject matter of the dispute

substantially arises within jurisdiction, was applicable."

8.2(A) Mr.G.N.Shah, learned counsel for the respondents states that in this case the court has no jurisdiction to decide the present cancellation petition. What is meant by jurisdiction, he has relied upon the judgment of the Hon'ble Supreme Court in the case of Official Trustee, West Bengal and Others Vs. Sachindra Nath Chatterjee and another reported in AIR 1969 S.C. 823. In that case, in para 15 the Court has observed as under:

> "From the above discussion it is clear that before a Court can be held to have jurisdiction to decide a particular matter it must not only have jurisdiction to try the suit brought but must also have the authority to pass the orders sought for. It is not sufficient that it has some jurisdiction in relation to the subject matter of the suit. Its jurisdiction must include the power to hear and decide the questions at issue, the authority to hear and decide the particular controversy that has arisen between the parties."

In view of the same, he has stated that the court has no power to hear and decide the question regarding cancellation of design in this matter and court has no authority to hear and decide the controversy in the present case.

8.3 Learned counsel for the respondents has submitted that if argument of advocate for the petitioner is accepted then the resultant effect would be that if there is any dealer or sub dealer who carry on business in any part of the country, he can file a cancellation of registration of design petition where he reside and can contend that he has suffered an injury where he resides or carried on business and thus he can select any High Court of the country. This will lead to a very anomalous situation. He stated that a word `the' before the High Court has significance. The word `a' has been substituted by the Indian Patents and Designs (Amendment) Act 7 of 1930 by Section 24. The word `a' was before the High Court prior to 1930. According to the learned counsel when legislature inserted the word "the" before High Court so some positive meaning has to be given to the said word. According to him only a Calcutta High Court had a jurisdiction where office of the Controller of design is situated or a High Court of Andhra Pradesh where suit has been filed by respondent No.1 and no other

High Courts has a jurisdiction to decide the cancellation of design. According to him, the decision of the Bombay High Court as well as the decision of the Supreme Court supports his plea in this behalf. According to him, the Bombay High Court has taken a very liberal view in the Kohinoor's case (supra) which has been restricted by the Full Bench of the Delhi High Court, however that Full Bench judgment of Delhi High Court will not apply in this case. Learned counsel for the respondents submitted that the Court must construe the provisions of the Designs Act in a such way that there may be some rationality in the interpretation of the Act. If the contention of the petitioner is accepted then it will lead to a very anomalous situation as indicated earlier. He has also relied upon Sec.2(7) of the Act which define the word `High Court' and also Sec.51-A of the Act in this behalf.

9. I have considered the rival submissions of the petitioner and the respondents in this case. In this case design has been registered at Calcutta and therefore present petition can be file before Calcutta High Court. In this case, suit for infringement of design has been filed by respondent No.1 at Hyderabad and therefore alternatively petitioner could have file present petition before Andhra Pradesh High Court which have a jurisdiction. In my view, either Calcutta High Court or Andhra Pradesh High Court have jurisdiction to consider the cancellation of design of respondent No.1 in this behalf.

10. I have considered the judgment of Bombay High Court in the case of Lalbhai's (supra) and the judgment of Hon'ble Supreme Court in the case of Workmen of Shri Ranga Vilas Motors (P) Ltd. (supra) and in the case of The Management of Indian Cable Co.Ltd., Calcutta (supra). The real question which one has to ask is whether dispute substantially arises within the jurisdiction of this Court and dispute must pertain the registration of design in question. As stated above, substantial dispute regarding registration of design can substantially arise before the Andhra Pradesh High Court where respondent No.1 has filed the suit against the present petitioner. As per those decisions, there must be some nexus between the dispute and the territory of the State and in this case also dispute arose before the Andhra Pradesh High Court where a subject matter of suit was filed or alternatively even before the Calcutta High Court where a subject matter of design was registered.

11. In my view, the contention of the respondent no.1 is required to be accepted and I am in respectful

agreement with the principle laid down by Bombay High Court in Lalbhai's case (supra) and Supreme Court judgment in Rangavilas Motor's case (supra) as same are binding to this Court. In my view, the substantial dispute has arisen at Hyderabad and therefore the Andhra Pradesh High Court has jurisdiction in this behalf. Merely because the petitioners are residing at Ahmedabad and carry on business at Ahmedabad alone will not confer jurisdiction to this court to decide the validity of registration of design. As the designs are registered at Calcutta office, a Calcutta High Court may have jurisdiction to decide the validity of design but in any case this court has no jurisdiction to decide the validity of design in the present matter.

12. In view of the aforesaid conclusion, I do not decide about the contention of the petitioners as to whether the respondent No.1's design may cancel on the merits of the matter or not this Court did not express any opinion about the same.

13. In the facts and circumstances of the case and in view of the aforesaid discussion, this petition is not required to be entertained and hence I dismiss the cancellation petition filed by the petitioner in this behalf. Notice is discharged.

(K.M. Mehta, J.)

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